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## Title 388 WAC: DSHS (Public Assistance)

**WAC 388-96-761 Home office, central office, and other off-premises assets.** Assets used in the provision of services by or to a nursing home, but not located on the premises of the nursing home, shall not be included in net invested funds or in the calculation of property reimbursement for the nursing facility. Depreciation, interest expense, and operating lease expense for home office, central office, and other off-premises assets may be allocated to the cost of services provided to or by the facility on a reasonable statistical basis approved by the department and included in the costs of services in cost centers where such services and related costs are appropriately reported.

[Statutory Authority: RCW 74.46.800, 84-12-039 (Order 2105), § 388-96-761, filed 5/30/84.]

**WAC 388-96-762 Allowable land.** (1) Beginning January 1, 1985, land associated with a nursing facility which is eligible for inclusion in net invested funds shall not exceed two acres for facilities located in a Metropolitan Statistical Area (MSA), as defined and determined by the United States Office of Management and Budget or other applicable federal office, and three acres for nursing facilities located outside such an area.

(2) The department may grant an exception to these limits if a contractor presents documentation deemed adequate by the department establishing a larger area of land is directly related to patient care. Requests for exceptions and any exceptions granted must be in writing.

(3) Requests for exceptions may be granted in the following cases:

(a) The area occupied by the nursing home building exceeds the allowable land area specified in subsection (1) of this section;

(b) The land is used directly in the provision of patient care;

(c) The land is maintained;

(d) The land is not subdivided or eligible for subdivision;

(e) The land is zoned for nursing home or similar use; or

(f) Other reasons exist which are deemed sufficient by the department.

[Statutory Authority: RCW 74.46.800 and 74.09.120, 93-19-074 (Order 3634), § 388-96-762, filed 9/14/93, effective 10/15/93. Statutory Authority: RCW 74.46.800, 84-12-039 (Order 2105), § 388-96-762, filed 5/30/84.]

**WAC 388-96-763 Rates for recipients requiring exceptionally heavy care.** (1) A nursing facility contractor certified to provide nursing services, a discharging hospital, a recipient of Medicaid benefits or her/his authorized representative may apply for an individual prospective reimbursement rate for a Medicaid recipient whose special nursing and direct care-related service needs are such that the hours of nursing services needed are at least twice the per patient day average of nursing services hours provided in the nursing facility to which the recipient is admitted as determined by the facility's Medicaid cost report for the calendar year immediately prior to the first fiscal year of the current state biennium.

(2) When application for an exceptional care rate is made before determining where the recipient will be placed,

pre-admission qualification may be granted when the recipient's special nursing and direct care needs require hours of nursing services at least twice the statewide per patient day average derived from Medicaid cost reports for the calendar year immediately prior to the first fiscal year of the current state biennium. For reviews to determine continued qualification only for such recipients, conducted during the specified period of time determined under subsection (4) of this section, the department will continue to utilize the statewide average available to the department, assuming the care plan is unchanged. For subsequent reviews to determine continued qualification, the contractor's average, set forth under subsection (1) of this section, shall be substituted for the statewide average.

(3) The contractor or other applicant shall apply for exceptional care rate qualification for an exceptionally heavy care recipient in accordance with department instructions. The facility shall bill the department at the authorized exceptional care rate within three hundred sixty-five days from the exceptional care rate's effective date. Bills for services submitted after three hundred sixty-five days shall be denied as untimely.

(4) When the department grants an individual rate for an exceptionally heavy care recipient, it shall be for a specified period of time, which the department shall determine, subject to extension, revision, or termination depending on the recipient's care requirements at the end of such period. If within thirty days after a resident's admission to a nursing facility the application for such resident for an exceptional care rate is submitted to the department and includes the facility plan of care documenting the need for and delivery of the resident's nursing and direct care hours, the rate, if approved, shall be effective as of the date of admission. Applications submitted more than thirty days after admission to the facility, if approved, shall be effective as of the date of application.

(5) Extensions of exceptional care rates will not be approved without an updated care plan and resident medical status information submitted in accordance with departmental instruction prior to the scheduled date of the rate's termination. Failure to comply will result in automatic termination as of the scheduled date and reinstatement of an exceptional care rate, if desired, will require re-application and approval. Discharge or transfer of the recipient, permanently or temporarily, shall terminate an exceptional care rate which shall be nontransferable to a different facility. Qualification upon re-admission shall require re-application. A contractor may not transfer or discharge a Medicaid recipient based upon the status of an exceptional care rate or application for such a rate.

(6) Regardless of whether statewide average nursing hours derived from the Medicaid cost reports for the calendar year immediately prior to the first fiscal year of the current state biennium or facility average nursing hours reported on the Medicaid cost reports for the calendar year immediately prior to the first fiscal year of the current state biennium are used for qualification, the exceptional care rate for a recipient shall be calculated by:

(a) Deriving a ratio equivalent to actual or projected nursing hours per patient day needed by the recipient in excess of the facility-specific reimbursed average nursing hours per patient day divided by the facility-specific reported

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average nursing hours per patient day derived from the Medicaid cost reports for the calendar year immediately prior to the first fiscal year of the current state biennium;

(b) Multiplying the ratio by the facility-specific nursing services rate in effect at the time of the initial request or in the case of continuation or revision, the facility's nursing services rate in effect at the time of the approval of the continuation or revision; and

(c) Adding the result of subsection (6)(b) of this section to the total facility-specific reimbursement rate; *provided*, that in no circumstance shall an exceptional care rate exceed one hundred sixty percent of the facility's Medicare reimbursement rate in place at the time the exceptional care rate takes effect.

(7) A pre-admission exceptional care rate shall be effective for thirty days. The contractor shall notify the department, in writing, as soon as the recipient is admitted to the contractor's facility. If resident placement in a Medicaid nursing facility has not occurred within thirty days after the department receives the exceptional care application the contractor shall submit, an updated plan of care in order to reinstate exceptional care qualification.

(8) Unless the department establishes otherwise, extensions require an updated plan of care to be completed and submitted every ninety days for each exceptional care recipient, including documentation supporting the need for services identified in the plan of care. The department shall base a decision to continue, revise, or terminate an exceptional care rate on review of the updated plan of care and supporting documentation, a current care need assessment, and other information available to the department.

In order to extend an exceptional care rate, the review must verify continued need for and delivery of nursing, direct and ancillary care services funded by the rate.

(9) An exceptional care rate shall not be revised during the period the exceptional care rate is in effect because the facility-specific nursing services or total rate is revised or reset; however, when an exceptional care rate is continued or revised as authorized in this section, the facility rate in place at the time of continuation or revision shall be used in the calculation process. An exceptional care rate shall be revised during the period the rate is in effect only when:

(a) An updated plan of care indicates a significant change in care needs; or

(b) Funded services are not fully delivered.

(10) No retroactive revision shall be made to an exceptional care rate, provided that:

(a) When application is made within thirty days after the recipient is admitted to the contractor's facility, an approved rate shall be effective the date of admission;

(b) When an exceptional care rate is revised due to a significant change, the revised rate will be effective on the date the department receives the updated plan of care and supporting documentation; and

(c) When care services funded by an exceptional care rate are not fully delivered, the exceptional care rate shall be reduced retroactively as of its effective date to the regular facility Medicaid rate and payment at the exceptional care rate shall cease immediately.

(11) Hours of nursing and direct care used to qualify a recipient and to calculate an exceptional rate must be

verified by a home and community services division, aging and adult services, regional community nurse consultant.

(12) The department shall notify the contractor, in writing, of the disposition of its application as soon as possible and in no case longer than thirty days following receipt of a properly completed application and supporting documentation.

[Statutory Authority: RCW 74.46.800, 94-12-043 (Order 3737), § 388-96-763, filed 5/26/94, effective 6/26/94; 92-16-013 (Order 3424), § 388-96-763, filed 7/23/92, effective 8/23/92. Statutory Authority: RCW 79.09.120 [74.09.120] and 74.46.800, 90-09-061 (Order 2970), § 388-96-763, filed 4/17/90, effective 5/18/90. Statutory Authority: RCW 74.09.180 and 74.46.800, 89-01-095 (Order 2742), § 388-96-763, filed 12/21/88. Statutory Authority: RCW 74.09.120, 82-21-025 (Order 1892), § 388-96-763, filed 10/13/82. Statutory Authority: RCW 74.08.090 and 74.09.120, 78-06-080 (Order 1300), § 388-96-763, filed 6/1/78. Statutory Authority: RCW 74.09.120, 78-02-013 (Order 1264), § 388-96-763, filed 1/9/78.]

**WAC 388-96-764 Activities assistants.** Costs associated with the employment of activities assistants working under the direction of a qualified activities specialist are allowable in the nursing services cost center subject to any applicable cost center limit contained in this chapter.

[Statutory Authority: RCW 74.46.800 and 74.09.120, 93-19-074 (Order 3634), § 388-96-764, filed 9/14/93, effective 10/15/93. Statutory Authority: RCW 74.46.800, 84-12-039 (Order 2105), § 388-96-764, filed 5/30/84.]

*See WSR 95-14-119*

**WAC 388-96-765 Ancillary care.** Beginning July 1, 1984, costs of providing ancillary care are allowable, subject to any applicable cost center limit contained in this chapter, provided documentation establishes the costs were incurred for medical care recipients and other sources of payment to which patients may be legally entitled, such as private insurance or Medicare, were first fully utilized.

[Statutory Authority: RCW 74.46.800 and 74.09.120, 93-19-074 (Order 3634), § 388-96-765, filed 9/14/93, effective 10/15/93. Statutory Authority: RCW 74.46.800, 84-12-039 (Order 2105), § 388-96-765, filed 5/30/84.]

**WAC 388-96-766 Notification of rates.** The department will notify each contractor in writing of its prospective reimbursement rate. Unless otherwise specified at the time it is issued, the rate will be effective from the first day of the month in which it is issued until a new rate becomes effective. If a rate is changed as the result of an appeal in accordance with WAC 388-96-904, it will be effective as of the date the rate appealed from became effective.

[Statutory Authority: RCW 74.09.120, 78-02-013 (Order 1264), § 388-96-766, filed 1/9/78.]

**WAC 388-96-767 Appraisal values.** If a contractor is unwilling or unable to provide and document the lessor's historical cost of leased assets, the department shall arrange for an appraisal of such assets to be conducted by the state of Washington department of general administration. If such an appraisal is conducted, it shall be the basis for all property and return on investment reimbursement, except that: If documentation subsequently becomes available to the department establishing the lessor's historical cost is less than the appraisal value, the historical cost shall be the basis for all property and return on investment reimbursement.

[Statutory Authority: RCW 74.46.800, 84-12-039 (Order 2105), § 388-96-767, filed 5/30/84.]

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**WAC 388-96-768 Minimum wage.** (1) Effective January 1, 1988, contractors shall adjust and maintain wages for all employees to conform to no less than the minimum hourly wage established by the legislature. This wage is four dollars and seventy-six cents an hour beginning January 1, 1988, and five dollars and fifteen cents an hour beginning January 1, 1989.

(2) Minimum wage requirements set forth in this section shall not apply to an employee who:

(a) The department of labor and industries determines is entitled to payments for temporary and total disability; and

(b) A physician authorizes to return to available work other than the employee's usual work.

(3) The employee shall be paid the minimum wage or more when resuming usual work.

[Statutory Authority: RCW 74.46.800 and 74.09.120. 93-19-074 (Order 3634). § 388-96-768, filed 9/14/93, effective 10/15/93; 90-09-061 (Order 2970). § 388-96-768, filed 4/17/90, effective 5/18/90. Statutory Authority: 1987 c 476. 88-01-126 (Order 2573), § 388-96-768, filed 12/23/87.]

*See WSR 95-14-119*

**WAC 388-96-769 Adjustments required due to errors or omissions.** (1) Prospective rates are subject to adjustment by the department in accordance with this section and subject to WAC 388-96-122 as a result of errors or omissions by the department or by the contractor. The department will notify the contractor in writing of each adjustment and of the effective date of the adjustment, and of any amount due to the department or to the contractor as a result of the rate adjustment. Rates adjusted in accordance with this section will be effective as of the effective date of the original rate whether the adjustment is solely for computing a preliminary or final settlement or for the purpose of modifying past or future rate payments as well.

(2) If a contractor claims an error or omission based upon incorrect cost reporting, amended cost report pages shall be prepared and submitted by the contractor. Amended pages shall be accompanied by the certification required by WAC 388-96-117 and a written justification explaining why the amendment is necessary. Such amendments shall not be accepted unless the amendments meet the requirements of WAC 388-96-122. If changes made by the amendments are determined to be material by the department according to standards established by the department, such amended pages shall be subject to field audit. If a field audit or other information available to the department determines the amendments are incorrect or otherwise unacceptable, any rate adjustment based on the amendment shall be null and void and future rate payment increases, if any, scheduled as a result of such an adjustment shall be cancelled immediately. Payments made based upon the rate adjustment shall be subject to repayment as provided in subsection (3) of this section.

(3) The contractor shall pay an amount owed the department resulting from an error or omission or from an improper adjustment, or commence repayment in accordance with a schedule determined by the department, within sixty days after receipt of notification of the rate adjustment or rate adjustment cancellation, unless the contractor contests the department's determination in accordance with the procedures set forth in WAC 388-96-904. If the determination is contested, the contractor shall pay or commence repayment within sixty days after completion of these

proceedings. If a refund is not paid when due, the amount thereof may be deducted from current payments by the department.

(4) If a cost report amendment is accepted for rate adjustment and was received by the department prior to the end of the period to which the rate is assigned, the department shall make any retroactive payment to which the contractor may be entitled within thirty days after the contractor is notified of the rate adjustment and shall increase future rate payments for the rate period, as appropriate.

(5) If a cost report amendment is received by the department subsequent to the rate period, notification of an adjustment or other disposition shall be made at preliminary or final settlement. Adjustments resulting from amendments received after the rate period shall be for the sole purpose of computing the preliminary or final settlement and no retroactive payment shall be made to the contractor. In accordance with WAC 388-96-229(1), any amount due a contractor as determined at preliminary or final settlement shall be paid within thirty days after the preliminary or final settlement report is submitted to the contractor.

(6) No adjustments for any purpose will be made to a rate more than one hundred twenty days after the final audit narrative and summary for the period the rate was effective is sent to the contractor or more than one hundred twenty days after the preliminary settlement becomes the final settlement. A final settlement within this one hundred twenty-day time limit may be reopened for the limited purpose of making an adjustment to a prospective rate in accordance with this section. However, only the adjustment and related computation will be subject to review if timely contested pursuant to WAC 388-96-901 and 388-96-904. Other actions relating to a settlement reopened shall not be subject to review unless previously contested in a timely manner.

[Statutory Authority: RCW 74.46.800. 86-10-055 (Order 2372). § 388-96-769, filed 5/7/86, effective 7/1/86. Statutory Authority: RCW 74.09.120. 82-11-065 (Order 1808). § 388-96-769, filed 5/14/82. 81-22-081 (Order 1712). § 388-96-769, filed 11/4/81. 78-02-013 (Order 1264). § 388-96-769, filed 1/9/78.]

**WAC 388-96-771 Receivership.** (1) If the nursing home is providing care to recipients of state medical assistance, the receiver shall:

(a) Become the Medicaid contractor for the duration of the receivership period;

(b) Assume all reporting responsibilities for new contractors;

(c) Assume all other responsibilities for new contractors set forth in this chapter; and

(d) Be responsible for the refund of Medicaid rate payments in excess of costs during the period of receivership.

(2) In establishing the prospective rate during receivership the department shall consider:

(a) Compensation, if any, ordered by the court for the receiver. Such compensation may already be available to the receiver through the rate as follows:

(i) The return on investment, or

(ii) The administrator's salary in the case of facilities where the receiver is also the administrator.

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If these existing sources of compensation are less than what was ordered by the court, additional costs may be allowed in the rate up to the compensation amount ordered by the court.

(b) Start-up costs and costs of repairs, replacements, and additional staff needed for patient health, security, and welfare. To the extent such costs can be covered through return on investment, no additional monies will be added to the rate;

(c) Any other allowable costs as set forth in this chapter.

(3)(a) Upon order of the court, the department shall provide emergency or transitional financial assistance to a receiver not to exceed thirty thousand dollars.

(b) The department shall recover any emergency or transitional expenditure made by the department on behalf of a nursing home not certified to participate in the Medicaid Title XIX program from revenue generated by the facility which is not obligated to the operation of the facility.

(c) In order to help recover an emergency or transitional expenditure, regardless of whether the facility is certified to participate in the Medicaid Title XIX program or not, the department may:

(i) File an action against the former licensee or owner at the time the expenditure is made to recover such expenditure; or

(ii) File a lien on the facility or on the proceeds of the sale of the facility.

(4) If recommendations on receiver's compensation are solicited from the department by the court, the department shall consider the following:

(a) The range of compensation for nursing home managers;

(b) Experience and training of the receiver;

(c) The size, location, and current condition of the facility;

(d) Any additional factors deemed appropriate by the department.

(5) When the receivership terminates, the department may revise the nursing home's Medicaid reimbursement. The Medicaid reimbursement rate for:

(a) The former owner or licensee shall be what it was before receivership, unless the former owner or licensee requests prospective rate revisions from the department as set forth in this chapter; and

(b) Licensed replacement operators shall be determined consistent with rules governing prospective reimbursement rates for new contractors as set forth in this chapter.

[Statutory Authority: RCW 79.09.120 [74.09.120] and 74.46.800. 90-09-061 (Order 2970). § 388-96-771, filed 4/17/90, effective 5/18/90. Statutory Authority: RCW 74.09.120. 88-06-085 (Order 2602). § 388-96-771, filed 3/2/88.]

**WAC 388-96-774 Add-ons to the prospective rate—Staffing.** (1) The department shall determine each contractor's reimbursement rates prospectively at least once each calendar year, to be effective July 1st.

(a) The department may grant a rate add-on to a nursing service (NS) or operational (OP) prospective reimbursement rate for:

(i) Variations in the distribution of patient classifications for the total resident population or changes in patient classifications for the total resident population from:

(A) The Medicaid cost report for the calendar year immediately prior to the first fiscal year of a state biennium; or

(B) Those used to set the rate for a new contractor; or

(ii) Changes in staffing levels at a facility required by the department as evidenced by a written directive from the director of nursing home services, aging and adult services administration.

(b) The department shall not grant and the contractor shall not use rate add-ons for:

(i) Compensation increases for existing, newly hired or promoted staff;

(ii) The use of temporary employment services providing direct patient care;

(iii) Any purpose if the nursing facility has a pending bankruptcy; *unless*, it is under chapter 11 and the nursing facility can provide a written evaluation from the trustee in bankruptcy stating the reorganization will be approved and implemented;

(iv) Correction of survey citations; or

(v) Staffing increases to resolve complaints.

(c) The department shall not grant a rate add-on to a cost center if that cost center is at or above the median cost limit for the facility's peer group reduced or increased under WAC 388-96-719.

(2) Per state fiscal year, the contractor may submit no more than two requests under this section. If a request has been previously submitted and denied because it was not complete, then it will not count as a request for this subsection; *provided*, the resubmitted request is complete and exactly the same as the previous request, e.g., type of request, positions and full-time equivalencies.

(3) Contractors requesting a rate add-on shall submit a written request to the office of rates management, aging and adult services administration, separate from all other requests and inquiries of the department, e.g., WAC 388-96-904 (1) and (5). The written request shall only be submitted after the hire date of the new staff and shall include the following:

(a) A financial analysis showing:

(i) The increased cost; and

(ii) An estimate of the rate increase, computed according to allowable methods, necessary to fund the cost.

(b) A written justification for granting the rate increase;

(c) A certification and supporting documentation showing the changes in staffing have commenced;

(d) Two proofs of hire, e.g., payroll document, W-4, and appointment letter;

(e) A written narrative describing the contractor's efforts to provide alternative solutions prior to submitting a request under this section; and

(f) A written plan specifying:

(i) Additional staff to be added;

(ii) Changes in all patient characteristics requiring the additional staff; and

(iii) The predicted improvements in patient care services that will result.

(4) Contractors receiving rate add-ons per this section shall submit quarterly reports. The quarterly reports shall cover the first day the rate add-on is effective and show how the additional rate funds and hours were utilized. If the contractor does not use the funds for the purpose for which

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they were granted, the department shall immediately recoup the misspent or unused funds.

(5) In reviewing a request made under subsection (3) of this section, the department shall consider but is not limited to one or more of the following:

(a) Whether additional staff requested by a contractor is necessary to meet patient care needs;

(b) Comparisons of staffing patterns of nursing facilities from either the latest statewide metropolitan statistical area (MSA) peer group or non-MSA peer group to which the nursing facility belongs and calculated on a per patient day basis. The department shall use the latest MSA and non-MSA designations received from the office of management and budget or the appropriate federal agency;

(c) The physical layout of the facility;

(d) Nursing service planning and management for maximum efficiency;

(e) Historic trends in underspending of a facility's nursing services and operational component rates;

(f) Numbers, positions, and scheduling of existing staff;

(g) Increases in acuity (debility) levels of all residents in the facility;

(h) Survey, complaint resolution reports, and quality assurance data; and

(i) The facility's ability to fund its staffing request through the facility's existing total Medicaid reimbursement rate.

(6) The department may also adjust rates to cover costs associated with placing a nursing home in receivership for costs not covered by the rate of the former contractor, including:

(a) Compensation of the receiver;

(b) Reasonable expenses of receivership and transition of control; and

(c) Costs incurred by the receiver in carrying out court instructions or rectifying deficiencies found.

(7) The department shall not grant a rate add-on effective earlier than sixty days prior to receipt of the initial written request by the office of rates management subject to the requirements of subsection (3) of this section, the department shall grant a rate add-on for an approved request as follows:

(a) If the request is received between the first day and fifteenth day of the month, then the rate will be effective on the first day of that month; or

(b) If the request is received between the sixteenth day and the last day of the month, the rate will be effective on the first day of the following month.

(8) If the initial written request is incomplete, the department will notify the contractor of the documentation and information required. The contractor must submit the requested information within fifteen days from the date the contractor receives the notice to provide the information. If the contractor fails to complete the rate add-on request by providing all the requested documentation and information within the fifteen days from the date of receipt of notification, the department will deny the request for failure to complete.

(9) If, after the denial for failure to complete the request, the contractor submits a written request for the same need, the date of receipt for the purposes of applying subsection (7) will depend upon whether the subsequent

request for the same need is complete, i.e., the department does not have to request additional documentation and information in order to make a determination. If a subsequent request for funding of the same need is:

(a) Complete, then the date of the initial incomplete request may be used when applying subsection (7) of this section; or

(b) Incomplete, then the date of the subsequent request must be used when applying subsection (7) of this section.

(10) The department shall respond, in writing, not later than sixty days after receipt of a complete request.

[Statutory Authority: RCW 74.46.800, 94-12-043 and 94-14-016 (Order 3737 and 3737A), § 388-96-774, filed 5/26/94 and 6/23/94, effective 6/26/94 and 7/24/94; 93-17-033 (Order 3615), § 388-96-774, filed 8/11/93, effective 9/11/93. Statutory Authority: RCW 74.46.800, 74.46.450 and 74.09.120, 93-12-051 (Order 3555), § 388-96-774, filed 5/26/93, effective 6/26/93. Statutory Authority: RCW 74.09.120 and 74.46.800, 90-09-061 (Order 2970), § 388-96-774, filed 4/17/90, effective 5/18/90. Statutory Authority: RCW 74.09.180 and 74.46.800, 89-01-095 (Order 2742), § 388-96-774, filed 12/21/88. Statutory Authority: 1987 c 476, 88-01-126 (Order 2573), § 388-96-774, filed 12/23/87. Statutory Authority: RCW 74.46.800, 87-09-058 (Order 2485), § 388-96-774, filed 4/20/87. Statutory Authority: RCW 74.09.120, 74.46.840 and 74.46.800, 85-17-052 (Order 2270), § 388-96-774, filed 8/19/85.]

See WSR 95-14-119

WAC 388-96-776 Add-ons to the prospective rate—

**Capital improvements.** (1) The department shall grant an add-on to a prospective rate for any capitalized additions or replacements made as a condition for licensure or certification; *provided*, the net rate effect is ten cents per patient day or greater.

(2) The department shall grant an add-on to a prospective rate for capitalized improvements done under RCW 74.46.465; *provided*, the legislature specifically appropriates funds for capital improvements for the biennium in which the request is made and the net rate effect is ten cents per patient day or greater. Physical plant capital improvements include, but are not limited to, capitalized additions, replacements or renovations made as a result of an approved certificate of need or capitalized additions or renovations for the removal of physical plant waivers.

(3) When physical plant improvements made under subsection (1) or (2) are completed in phases, the department shall not grant a rate add-on for any addition, replacement or improvement until each phase is completed and fully utilized for which it was intended. The department shall limit rate add-on to only the actual cost of the depreciable tangible assets meeting the criteria of WAC 388-96-557 and as applicable to that specific completed and fully utilized phase.

(4) When the construction class of any portion of a newly constructed building will improve as the result of any addition, replacement or improvement occurring in a later, but not yet completed and fully utilized phase of the project, the most appropriate construction class, as applicable to that completed and fully utilized phase, will be assigned for purposes of calculating the rate add-on. The department shall not revise the rate add-on retroactively after completion of the portion of the project that provides the improved construction class. Rather, the department shall calculate a new rate add-on when the improved construction class phase is completed and fully utilized and the rate add-on will be effective in accordance with subsection (8) of this section using the date the class was improved.

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(5) The department shall not add on construction fees as defined in WAC 388-96-745(6) and other capitalized allowable fees and costs as related to the completion of all phases of the project to the rate until all phases of the entire project are completed and fully utilized for the purpose it was made. At that time, the department shall add on these fees and costs to the rate, effective no earlier than the earliest date a rate add-on was established specifically for any phase of this project. If the fees and costs are incurred in a later phase of the project, the add-on to the rate will be effective on the same date as the rate add-on for the actual cost of the tangible assets for that phase.

(6) The contractor requesting an adjustment under subsection (1) or (2) shall submit a written request to the office of rates management separate from all other requests and inquiries of the department, e.g., WAC 388-96-904 (1) and (5). A complete written request shall include the following:

(a) A copy of documentation (i.e., survey level "A" deficiency) requiring completion of the addition or replacements to maintain licensure or certification for adjustments requested under subsection (1) of this section;

(b) A copy of the new bed license, whether the number of licensed beds increases or decreases, if applicable;

(c) All documentation, e.g., copies of paid invoices showing actual final cost of assets and/or service, e.g., labor purchased as part of the capitalized addition or replacements;

(d) Certification showing the completion date of the capitalized additions or replacements and the date the assets were placed in service per WAC 388-96-559(2);

(e) A properly completed depreciation schedule for the capitalized additions or replacement as provided in this chapter;

(f) A written justification for granting the rate increase; and

(g) For capitalized additions or replacements requiring certificate of need approval, a copy of the approval and description of the project.

(7) The department's criteria used to evaluate the request may include, but is not limited to:

(a) The remaining functional life of the facility and the length of time since the facility's last significant improvement;

(b) The amount and scope of the renovation or remodel to the facility and whether the facility will be better able to serve the needs of its residents;

(c) Whether the improvement improves the quality of living conditions of the residents;

(d) Whether the improvement might eliminate life safety, building code, or construction standard waivers;

(e) Prior survey results; and

(f) A review of the copy of the approval and description of the project.

(8) The department shall not grant a rate add-on effective earlier than sixty days prior to the receipt of the initial written request by the office of rates management and not earlier than the date the physical plant improvements are completed and fully utilized. The department shall grant a rate add-on for an approved request as follows:

(a) If the physical plant improvements are completed and fully utilized during the period from the first day to the

fifteenth day of the month, then the rate will be effective on the first day of that month; or

(b) If the physical plant improvements are completed and fully utilized during the period from the sixteenth day and the last day of the month, the rate will be effective on the first day of the following month.

(9) If the initial written request is incomplete, the department will notify the contractor of the documentation and information required. The contractor shall submit the requested information within fifteen days from the date the contractor receives the notice to provide the information. If the contractor fails to complete the add-on request by providing all the requested documentation and information within the fifteen days from the date of receipt of notification, the department shall deny the request for failure to complete.

(10) If, after the denial for failure to complete, the contractor submits a written request for the same project, the date of receipt for the purpose of applying subsection (8) will depend upon whether the subsequent request for the same project is complete, i.e., the department does not have to request additional documentation and information in order to make a determination. If a subsequent request for funding of the same project is:

(a) Complete, then the date of the first request may be used when applying subsection (8); or

(b) Incomplete, then the date of the subsequent request must be used when applying subsection (8) even though the physical plant improvements may be completed and fully utilized prior to that date.

(11) The department shall respond, in writing, not later than sixty days after receipt of a complete request.

(12) If the contractor does not use the funds for the purpose for which they were granted, the department shall immediately recoup the misspent or unused funds.

(13) When any physical plant improvements made under subsection (1) or (2) results in a change in licensed beds, any rate add-on granted will be subject to the provisions regarding the number of licensed beds, patient days, occupancy, etc., included in this chapter.

[Statutory Authority: RCW 74.46.800, 94-12-043 (Order 3737), § 388-96-776, filed 5/26/94, effective 6/26/94.]

**WAC 388-96-777 Add-ons to the prospective rate—Initiated by the department.**

(1) The department shall initiate all rate add-ons granted under this section. Contractors may not request and be approved a rate add-on under this section.

(2) Rate add-ons the department grants under the authority of this section shall be for costs to implement:

(a) Program changes that the director of nursing home services, aging and adult services administration determines a rate add-on is necessary to accomplish the purpose of the change and announces same in a written directive to the chief of the office of rates management; or

(b) Changes in either the state or federal statutes or regulations or directives that the director of management services, aging and adult services administration determines requires a rate add-on to implement and directs in writing the chief of the office of rates management to implement.

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(3) Changes made under this section are subject to review under WAC 388-96-901 and 388-96-904; *provided*, the issue is not whether a rate add-on should have been granted.

(4) If the contractor does not use the funds for the purpose for which they were granted, the department shall immediately recoup the misspent or unused funds.

[Statutory Authority: RCW 74.46.800, 94-12-043 (Order 3737), § 388-96-777, filed 5/26/94, effective 6/26/94.]

**WAC 388-96-778 Public disclosure of rate-setting methodology.** Without identifying individual nursing homes, the department will make available to the public full information regarding its rate-setting methodology.

[Statutory Authority: RCW 74.09.120, 78-02-013 (Order 1264), § 388-96-778, filed 1/9/78.]

**WAC 388-96-801 Billing period.** A contractor shall bill the department for care provided to medical care recipients from the first through the last day of each calendar month.

[Order 1262, § 388-96-801, filed 12/30/77.]

**WAC 388-96-804 Billing procedures.** (1) A contractor shall bill the department each month by completing and returning the nursing home statement provided by the department. This form shall be completed and filed in accordance with instructions issued by the department.

(2) A contractor shall not bill the department for service provided to a recipient until an award letter relating to the recipient has been received except in accordance with department policies and procedures. At that time it may bill for service provided back through the date the recipient was admitted or became eligible.

(3) Billing shall not cover the day of a recipient's death, discharge or transfer from the nursing home.

[Statutory Authority: RCW 74.09.120, 82-20-024 and 82-20-036 (Orders 1883 and 1883A), § 388-96-804, filed 9/29/82 and 9/30/82; Order 1262, § 388-96-804, filed 12/30/77.]

**WAC 388-96-807 Charges to patients.** (1) The department shall notify a contractor of the amount each medical care recipient is required to pay for care provided under the contract and the effective date of such required contribution. It is the contractor's responsibility to collect that portion of the cost of care from the patient, and to account for any authorized reduction from his or her contribution in accordance with procedures established by the department.

(2) If a contractor receives documentation showing a change in the income or resources of a recipient which means a change in his or her contribution toward the cost of care, the contractor shall report this in writing to the CSO within seventy-two hours. If necessary, the department shall make appropriate corrections in the next nursing home statement, and attach a copy of documentation supporting the change. If a contractor receives increased funds for a recipient, the nursing home shall contact the CSO within seventy-two hours.

(3) The contractor shall accept the reimbursement rate established by the department as full compensation for all services it is obligated to provide under the contract, certification as specified by Title XIX, and licensure under chapter 18.51 RCW. The contractor shall not seek or accept additional compensation from or on behalf of a recipient for any or all such services.

[Statutory Authority: RCW 74.09.180 and 74.46.800, 89-01-095 (Order 2742), § 388-96-807, filed 12/21/88; Statutory Authority: RCW 74.09.120, 83-19-047 (Order 2025), § 388-96-807, filed 9/16/83; 82-21-025 (Order 1892), § 388-96-807, filed 10/13/82; Order 1262, § 388-96-807, filed 12/30/77.]

**WAC 388-96-810 Payment.** (1) The department will reimburse a contractor for service rendered under the nursing home contract and billed for in accordance with WAC 388-96-804.

(2) The amount paid will be computed using the appropriate rate assigned to the contractor.

(3) The special rate assigned to a contractor by the department for the care of an exceptional care recipient will be used in computing the amount paid for care of such recipient.

(4) For each recipient, the department will pay an amount equal to the appropriate rate or rates, multiplied by the number of patient days each rate was in effect, less the amount the recipient is required to pay for his or her care (see WAC 388-96-807).

[Order 1262, § 388-96-810, filed 12/30/77.]

*See WSR 95-14-119*  
**WAC 388-96-813 Suspension of payment.** (1) Payments to a contractor may be withheld by the department in each of the following circumstances:

(a) A required report is not properly completed and filed by the contractor within the appropriate time period, including any approved extensions. Payments will be released as soon as a properly completed report is received.

(b) Auditors or other authorized department personnel in the course of their duties are refused access to a nursing home or are not provided with existing appropriate records. Payments will be released as soon as such access or records are provided.

(c) A refund in connection with a settlement or rate adjustment is not paid by the contractor when due. The amount withheld will be limited to the unpaid amount of the refund.

(d) Payment for the final thirty days of service under a contract will be held pending final settlement when the contract is terminated.

(2) No payment will be withheld until written notification of the suspension is given to the contractor, stating the reason therefor.

[Statutory Authority: RCW 74.09.120, 83-19-047 (Order 2025), § 388-96-813, filed 9/16/83; Order 1262, § 388-96-813, filed 12/30/77.]

**WAC 388-96-816 Termination of payments.** All payments to a contractor will end no later than sixty days after any of the following occurs:

- (1) A contract expires, is terminated, or is not renewed;
- (2) A facility license is revoked; or
- (3) A facility is decertified as a Title XIX facility.

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[Statutory Authority: RCW 74.09.120, 83-19-047 (Order 2025), § 388-96-816, filed 9/16/83; Order 1262, § 388-96-816, filed 12/30/77.]

*See WSR 95-14-119*

**WAC 388-96-901 Disputes.** (1) If a reimbursement rate issued to a contractor is believed to be incorrect because it is based on errors or omissions by the contractor or department, the contractor may request an adjustment pursuant to WAC 388-96-769. Pursuant to WAC 388-96-904(1) a contractor may within twenty-eight days request an administrative review after notification of an adjustment or refusal to adjust.

(2) If a contractor wishes to contest the way in which a department rule, contract provision, or policy statement utilized as part of the prospective cost-related reimbursement system's rate calculation methodology was applied to the contractor by the department, e.g., in setting a reimbursement rate or determining a disallowance at audit, it shall first pursue the administrative review process set out in WAC 388-96-904.

(3) Subject to subsection (5) of this section the administrative review and fair hearing process set out in WAC 388-96-904 need not be exhausted if a contractor wishes to challenge the legal validity of a statute, rule, contract provision or policy statement.

(4) The department's administrative review and fair hearing process, set out in WAC 388-96-904 and in RCW 74.46.780, shall not be used to challenge the adequacy of prospective or settlement reimbursement rates or rate components, whether preliminary or final, either individually or collectively, or to challenge audit actions or adjustments, under the federal Boren amendment payment standard found at 42 USC 1396a(a)(13)(A) and contained in federal regulation. Further, the administrative review and fair hearing process shall not be used to challenge the department's procedural compliance with this standard. Only in courts of proper jurisdiction shall contractors challenge the department's substantive and/or procedural compliance with the Boren amendment standard.

(5) The prohibition contained in subsection (4) against pursuit of substantive or procedural Boren amendment challenges in the administrative review and fair hearing process shall apply regardless of whether the challenge is brought for the purpose of obtaining an administrative decision or for the purpose of making a record or argument for subsequent judicial review. Further, the process shall not be used to challenge the validity of statutes or regulations, whether for the purpose of obtaining an administrative decision or making a record or argument for subsequent judicial review, based upon alleged substantive or procedural noncompliance with the Boren amendment standard.

[Statutory Authority: RCW 74.46.800 and 74.09.120, 91-12-026 (Order 3185), § 388-96-901, filed 5/31/91, effective 7/1/91. Statutory Authority: RCW 74.09.120, 82-21-025 (Order 1892), § 388-96-901, filed 10/13/82; Order 1262, § 388-96-901, filed 12/30/77.]

*See WSR 95-14-119*

**WAC 388-96-902 Recoupment of undisputed overpayments.** The department is authorized to withhold from the nursing home current payment all amounts found by preliminary or final settlement to be overpayments not identified by the nursing home and challenged as overpayments as part of a good-faith administrative or judicial review. Contested amounts retained by the nursing home

pursuant to this section may be subject to recoupment by the department from the nursing home current payment upon completion of judicial and administrative review procedures to the extent the department's position or claims are upheld.

[Statutory Authority: RCW 74.09.120, 82-11-065 (Order 1808), § 388-96-902, filed 5/14/82.]

*See WSR 95-14-119*

**WAC 388-96-904 Administrative review—Adjudicative proceeding.** (1) Within twenty-eight days after a contractor is notified of an action or determination it wishes to challenge, the contractor shall request, in writing, the appropriate director or the director's designee review such determination. The contractor shall send the request to the office of rates management, aging and adult services administration. If the contractor uses a facsimile to establish the request for review, the facsimile must conform to subsection (1)(a), (b) and (c) and the original including the requirements of subsection (d) of this section must be received by the office of rates management within seven days after the transmission of the facsimile. The contractor or the licensed administrator of the facility shall:

(a) Sign the request;

(b) Identify the challenged determination and the date thereof;

(c) State as specifically as practicable the issues and regulations involved and the grounds for contending the determination is erroneous; and

(d) Attach to the request copies of any documentation the contractor intends to rely on to support the contractor's position.

(2) After receiving a timely request meeting the criteria of subsection (1) of this section, the department shall contact the contractor to schedule a conference for the earliest mutually convenient time. If the department and contractor cannot agree to a mutually convenient time, then department shall schedule the conference for no earlier than fourteen days after the contractor was contacted by the department to schedule the conference and no later than ninety days after a properly completed request is received, unless both parties agree, in writing, to a specific later date. The department may conduct the conference by telephone unless either the department or the contractor requests, in writing, the conference be held in person.

(3) The contractor and appropriate representatives of the department shall participate in the conference. In addition, representatives selected by the contractor may participate. The contractor shall bring to the conference and provide to the department fourteen days in advance of the conference:

(a) Any documentation requested by the department which the contractor is required to maintain for audit purposes under WAC 388-96-113; and

(b) Any documentation the contractor intends to rely on to support the contractor's contentions. The parties shall clarify and attempt to resolve the issues at the conference. If additional documentation is needed to resolve the issues, the parties shall schedule a second session of the conference for not later than thirty days after the initial session unless both parties agree, in writing, to a specific later date.

(4) Regardless of whether agreement has been reached at the conference, the director of management services division, aging and adult services or designee shall furnish

the contractor a written decision within sixty days after the conclusion of the last conference held or the receipt of all required documentation on the action or determination challenged by the contractor.

(5) A contractor has the right to an adjudicative proceeding to contest only issues raised in the administrative review conference and addressed in the director's administrative review decision.

(a) A contractor contesting the director's decision shall within twenty-eight days of receipt of the decision:

(i) File a written application for an adjudicative proceeding with the office of appeals;

(ii) Sign the application or have the licensed administrator of the facility sign it;

(iii) State as specifically as practicable the issues and law involved;

(iv) State the grounds for contesting the director's decision; and

(v) Attach to the application a copy of the director's decision being contested and copies of any documentation the contractor intends to rely on to support its position.

(b) The proceeding shall be governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 388-08 WAC. If any provision in this chapter conflicts with chapter 388-08 WAC, the provision in this chapter governs.

(6) Subject to subsection (7) of this section adjudicative proceedings timely requested under subsection (5) of this section shall be dismissed unless within one calendar year after the department receives the application:

(a) All issues have been resolved by a written, signed settlement agreement between the contractor and the department; or

(b) The evidentiary record, including all briefing, has been closed.

(7) If a written settlement agreement resolving all the issues has not been signed by both the contractor and the department and if the evidentiary record, including all briefing, has not been closed upon the expiration of one year after the application was received by the department, the office of administrative hearings shall, within fourteen days after the expiration date:

(a) Issue a written order dismissing the adjudicative proceeding with prejudice to the contractor; or

(b) Issue a written order for a continuance for good cause described in the order for a period not to exceed ninety days.

Good cause as stated in the order must show the hearing was prevented from being held because of circumstances that were beyond the control of the contractor. Upon expiration of any extension period and without either a signed settlement agreement resolving all issues on a closed evidentiary record including all briefing, the office of administrative hearings shall either dismiss with prejudice to the contractor or continue for good cause as provided in this subsection. Orders for dismissal or continuance shall be subject to a petition for review timely filed with the department's office of appeals if desired by either party.

[Statutory Authority: RCW 74.46.800, 94-12-043 (Order 3737), § 388-96-904, filed 5/26/94, effective 6/26/94. Statutory Authority: RCW 74.46.800 and 74.09.120, 91-12-026 (Order 3185), § 388-96-904, filed 5/31/91, effective 7/1/91. Statutory Authority: RCW 34.05.220 (1)(a) and

74.09.120, 90-04-071 (Order 3007), § 388-96-904, filed 2/5/90, effective 3/1/90. Statutory Authority: RCW 74.09.180 and 74.46.800, 89-01-095 (Order 2742), § 388-96-904, filed 12/21/88. Statutory Authority: 1987 c 476, 88-01-126 (Order 2573), § 388-96-904, filed 12/23/87. Statutory Authority: RCW 34.04.020, 84-05-040 (Order 2076), § 388-96-904, filed 2/17/84. Statutory Authority: RCW 74.09.120, 82-21-025 (Order 1892), § 388-96-904, filed 10/13/82; Order 1261, § 388-96-904, filed 12/30/77.]

## Chapter 388-97 WAC NURSING HOMES

### WAC

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WSR 95-14-119  
EMERGENCY RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES

(Public Assistance)

(Order 3869—Filed June 30, 1995, 4:50 p.m., effective July 1, 1995,  
12:01 a.m.)

Date of Adoption: June 30, 1995.

Purpose: WAC 388-96-010, to amend definitions of terms to conform to the new legislation ("resident day," "client day," "recipient day," "rebased rate," and "cost rebased rate"); to remove obsolete language; and clarify.

WAC 388-96-032, to implement the new legislation regarding security for all debts to the department upon termination of a Medicaid nursing provider contract; to authorize obtaining security from a contractor for debts to the department reaching fifty thousand dollars and additional security for each increase of twenty-five thousand dollars; to authorize withholding payments for services in the absence of acceptable security.

WAC 388-96-108, to extend time for repayment of debt to the department relating to failure to submit a final cost report from thirty to sixty days to be consistent with the new legislation.

WAC 388-96-204, to substitute requirement of periodic department audits for requirement of audits every three years of a nursing facility's cost reports, accounts and resident trust funds, in accordance with the new legislation; to provide for a ten working day advance notice for such audits consistent with the new legislation.

WAC 388-96-210, to reflect in language addressing scope of nursing facility audits the one-time, three-year rate setting cycle provided in the new legislation.

WAC 388-96-216, repealed to eliminate deadline for completion of audits after submission of a nursing facility's cost report, consistent with broad authority of department to perform audits periodically as deemed necessary under the new legislation.

WAC 388-96-220, to provide that field audit findings shall be evaluated and that a final Medicaid settlement for a nursing facility shall be issued upon completing of the audit if performed, including any administrative review, but not including any judicial review, consistent with the new legislation.

WAC 388-96-221, to allow twenty-eight days to request review of a preliminary settlement (replacing thirty days) and limit such reviews to settlement issues, prohibiting consideration of rate setting or audit issues, consistent with the new legislation.

WAC 388-96-224, to repeat requirement that a final settlement be issued upon completion of an audit and any administrative review, but not including any judicial review; to eliminate procedure for issuing partial settlements when an audit appeal is pending; to repeat prohibition of pursuing audit and rate issues in an administrative review of a settlement, to amend appeal period from thirty to twenty-eight days, consistent with the new legislation.

WAC 388-96-229, to require the department to make preliminary or final settlement payments owed to a contractor within sixty days; to require the department to pay interest at one percent per month on any balance existing after sixty days; to require a contractor to pay preliminary or

final settlement amounts owed to the department within sixty days after receipt of the settlement; to provide that administrative or judicial review shall not delay recovery; allow the department to recover amounts owed from settlements held and to recoup from service payments in the event of nonpayment; to require the department to adjust interest owed if a contractor is successful on final administrative or judicial review, consistent with the new legislation.

WAC 388-96-384, to require nursing facilities to secure the personal funds of deceased residents held in trust to the department's office of financial recovery in the event they were recipients of Medicaid; requires funds to be sent by cashier's check, consistent with the new legislation.

WAC 388-96-501, to make costs Medicaid unallowable if they will not be incurred in a period to be covered by the rate due to statutory exemption, consistent with the new legislation.

WAC 388-96-585, to make costs Medicaid unallowable if they will not be incurred in a period to be covered by the rate due to statutory exemption, consistent with the new legislation.

WAC 388-96-704, to clarify that Medicaid nursing facility rates shall be set or adjusted consistent with the amendments to chapter 74.46 RCW contained in the new legislation.

WAC 388-96-709, to remove reference to old biennial rate system being replaced; to provide how rates will be adjusted to reflect a reduction in licensed beds at a nursing facility to reflect the new minimum occupancy requirement of ninety percent or eighty-five percent, as applicable, consistent with the new legislation.

WAC 388-96-710, to remove reference to old biennial rate system being replaced; to clarify how new contractor rates will be set under the new payment system; to provide that minimum occupancy of eighty-five percent will be used for July 1, 1995, rates for a new contractor whose facility occupancy increased by at least five percent during 1994; to provide procedure for setting a new contractor's rate for facilities receiving certificate of need approval before June 30, 1988, and commencing operations on or after January 1, 1995, consistent with new legislation.

WAC 388-96-713, to update language and remove reference to old biennial system being replaced, consistent with new legislation.

WAC 388-96-716, to reflect new minimum occupancy rates of ninety percent or eighty-five percent, as applicable, in calculating rates, consistent with the new legislation.

WAC 388-96-719, to establish rate setting and adjustment principles for Medicaid nursing facility rates for July 1, 1995, July 1, 1996, and July 1, 1997; to provide that July 1, 1995, rates will be cost rebased but July 1, 1996, and July 1, 1997, rates will not be cost rebased; to establish sources and time periods for determining rate adjustments for economic trends and conditions for these rates; to establish procedures for obtaining measures of increase or decrease to be applied to rates; to establish a minimum occupancy level of ninety percent for rate setting effective July 1, 1995, and following, consistent with the new legislation.

WAC 388-96-722, to remove obsolete references to old biennial system being replaced; to provide that July 1, 1995, component rates in nursing services will be cost rebased on 1994 adjusted costs adjusted by the 1994 IPD index; to